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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 29, 1997

Ms. Judy Boley
Federal Communications Commission
Room 234
1919 M Street, N.W.,
Washington, D.C. 20554

Dear Secretary,

On behalf of The Association for Community Education, Inc. enclosed please find an original and two copies of comments for the Proposed Rulemaking in the matter of:

The Implementation of Section 309 (j) of the Communications Act-- Competitive Bidding for Commerical Broadcast and Instructional Television Fixed Service Licenses
MM Docket No. 97-234.

and;

Reexamination of the Policy Statement on Comparative Broadcast Hearings
GC Docket No. 92-52.

and;

Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolutin of the Cases.
GEN Docket No. 90-264

Thank you for your attention to this matter. Please contact the undersigned concerning any questions you may have.

Sincerely,


Phil Guthrie
President

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Before the Federal Communications Commission, JAN 5 - 1998
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	MM Docket No. 97-234
Implementation of Section 309(j))	
Of the Communications Act)	GC Docket No. 92-52
--- Competitive Bidding for Commercial)	
Broadcast and Instructional TV Fixed)	GEN Docket No. 90-264
Service Licenses)	
)	
Comments from:)	
The Association for Community)	
Education, Inc., a non-Profit)	
Educational Broadcaster)	

To: The Commission

IN RESPONSE TO THE COMMISSION'S REQUEST FOR COMMENTS

These comments are in response to MM Docket No. 97-234, Notice of Proposed Rulemaking, in the matter of Implementation of Section 309(j) of the Communications Act --- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses. These comments are timely, within the 45 day period following publication (the Notice of Proposed Rulemaking "NPRM" was released November 26, 1997).

These comments are filed by the Association for Community Education, Inc. "the Association", and by its technical consultant Carl E. Gluck. The Association is a California based non-Profit Educational Broadcaster that operates full service broadcast stations (AM & FM) and several FM Broadcast Translators. These comments are

primarily about how the NPRM might affect secondary FM broadcast translator application competitive bidding and associated fees.

BACKGROUND

Non-Profit broadcasters use FM Translators to bring diversity programming to population centers that would otherwise not receive such programming. FM Broadcast Translators use a portion of the frequency spectrum and allocation area that is underutilized by full service FM Broadcasters. Non-Profit broadcasters have historically operated translators in the commercial portion of the FM broadcast band in locations where spectrum is unavailable in the non-commercial portion of the band. Non-profit broadcasters, under the proposed bidding process, can add a valuable revenue stream in mutually exclusive application situations.

On the other hand, Non-Profit broadcasters sometimes operate with very meager operating budgets. Sometimes the minority and ethnic groups served by their specialized programming do not generate large revenue streams for the broadcaster, as other mainstream programming might. The operation of FM Broadcast Translators has in the past been economically viable within the constraints of these budgets. But a very thin line exists between keeping FM Broadcast Translators economically viable or moving them to the memories of history.

The NPRM as proposed could affect all operation in the Commercial portion of the FM Broadcast band above 92 MHz. It appears that the process proposed might spill beyond mutually exclusive filings to some minimum filing entry fee that may affect non-mutually exclusive filings¹. At the very least, as proposed, the filing process might be

¹ Although paragraph 71 of the NPRM specifically says applications that are not mutually exclusive would not be subject to auction, the paragraphs preceding that statement propose a window filing process and a pre-auction process (and cost) that might apply to every application regardless of its mutual exclusivity.

more complicated to hold it to an exact bidding window even when mutual exclusivity is not an issue.

The Code of Federal Regulations Chapter 47 Part 74 allows broadcasters to feed translators below 92 MHz with alternative program delivery methods, including Satellite receiver feeds. Translators above 92 MHz are generally permitted to broadcast only those signals received directly over the air from another FM broadcast station. The opportunity presented by these rules has established chains of FM broadcast translators in which the first link operates below 92 MHz and is fed from a Satellite receiver, and subsequent links in the chain (other translators) operate above 92 MHz, picking up an earlier translator signal to rebroadcast it. Sometimes chains of 3 or 4 translators grow to carry a signal from a Satellite fed translator in a small population center to several subsequent links in the chain that are located in larger population centers. Non-Profit broadcasters in particular have used this method to establish significant specialized audiences. Thus non-Profit broadcasters have a huge stake in translators that operate in the commercial part of the FM band.

The secondary nature of FM Broadcast Translators often requires their licensees to change their operating frequency when some full service station changes in a manner that preempts operation on the original frequency. Without the ability to operate economically in the commercial portion of the band many of these translators would be removed from the air over time, breaking the chain that feeds several translators down the chain, as described earlier. Thus, if operation in the commercial band becomes more difficult or too expensive most translator chains would disappear over time. This, in turn, would deprive many listeners of diversity programming not otherwise available in their area.

Therefore, the Association suggests that the implementation of competitive bidding for mutually exclusive broadcast applications be done in a manner that does not

interfere with the historical operation of non-Profit educational FM Translators. Applications that are not mutually exclusive should be handled as in the past. Major Change applications to rectify the impending loss of an existing FM translator should not be subject to the auction process and time delays caused by soliciting competitive bids. If it is absolutely necessary to limit non-Profit licensee commercial band FM translator applications to specific bidding windows, it is suggested that any base or minimum fee to participate in such a window (for an operation that is not mutually exclusive) be limited to no more than \$100.

In mutually exclusive situations, or in any case where a bidding applicant pays for a secondary service, it is appropriate to break the winning bid into several payments stretched out over many months of time (to ensure that non-Profit translator operators can afford to participate). Periodic payments (monthly, quarterly, annually, etc.) would only be required so long as the secondary service remains viable (per the terms of 47 CFR 74.1203, 74.1204(f), etc.). In the event an FM translator must leave the air due to unresolved interference (resulting from its secondary nature) the licensee would no longer be obligated to pay remaining payments on the winning bid. For this reason an extensive review of the bidding applicant's engineering would not be necessary. If a translator leaves the air due to unresolved interference its space in the spectrum would be returned to the bidding block for any future applications. By keeping non-Profit licensee participation in the commercial band bidding process affordable the Commission would ensure a continuing source of auction revenue that might otherwise fall by the way.

In the instant NPRM the Commission repeatedly speaks to its longstanding commitment to minority participation in the broadcast industry. The Association understands that the Commission is primarily addressing ownership participation. The Association is also aware that the Commission generally does not show any preference to programming content or format. However, like many non-Profit translator operators, the

Association presents programming that is entirely aimed at a foreign language audience and that contains programming to an ethnic group². For this reason the Association asks that the Commission demonstrate its commitment to minorities and their participation in the broadcast industry by preserving the historical role FM broadcast translators have had in minority programming.

Respectfully submitted,

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December 26, 1997

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² The Association for Community Education broadcasts in the Spanish language. The Spanish community is the fastest growing ethnic group in the United States. The Spanish community does not have a high per capita income but it does have a high need of quality educational programming. Like other minority groups living in the U.S. the Spanish community obtains much of its news and information from the Spanish language media.